

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES D. SMITH,

Plaintiff,

v.

BRIAN MCGARVIE, *et al.*,

Defendants.

Case No. C05-5156RJB

ORDER

The Court, having reviewed Plaintiff's motion for an extension of time to extend filing deadlines (Doc. 103), Plaintiff's motion for an extension of time to respond to Defendants second motion for summary judgment (Doc. 104), Plaintiff's motion to stay Defendants' second motion for summary judgment (Doc. 105), Plaintiff's motion to appoint counsel (Doc. 106), Plaintiff's motion for oral argument (Doc. 108), Plaintiff's cross-motion for summary judgment, and the balance of the record, does hereby find and ORDER:

(1) On the same date of this order the undersigned has prepared and issue a report and recommendation to grant Defendants' motion for summary judgment (Doc. 101). By the date the court considered the motions, Plaintiff had filed at least two pleadings in direct response to the issues raised by Defendants. See Docs. 95 & 107. Accordingly, Plaintiff's motions for extensions of time (Docs. 103 & 104) to respond to those issues are denied as being moot. Similarly, Plaintiff's motion to stay Defendant's second motion for summary judgment (Doc. 105) and Plaintiff's motion to present oral argument (Doc. 108) are both denied.

(2) There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d

1 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe,
2 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the
3 likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of
4 the complexity of the legal issues involved. Wilborn, 789 F.2d at 1331.

5 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. Moreover, it appears
6 that this case does not involve exceptional circumstances which warrant appointment of counsel.
7 Accordingly, Plaintiff's Motion to Appoint Counsel, which is the second time Plaintiff has requested
8 counsel, is denied.

9 DATED this 15th day of May, 2007.

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11 /s/ J. Kelley Arnold
12 J. Kelley Arnold
13 United States Magistrate Judge
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